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Office of Administrative Law Judges
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Issue Date: 23 June 2005

Case No.: 2004-LHC-01927

OWCP No.: 02-127104

In the Matter of:

DEBRA ELLISON,
Claimant

v.

NAVAL MILITARY PERSONNEL COMMAND AND THE BUREAU OF NAVAL PERSONNEL
Employer, and

CONTRACT CLAIMS SERVICES
Carrier.

Appearances: Lewis S. Fleishman, Esq.
For the Claimant

Thomas C. Fitzhugh, III, Esq.
For the Employer and Carrier

Before: Russell D. Pulver
Administrative Law Judge

DECISION AND ORDER GRANTING BENEFITS

This case arises from a claim for compensation brought under the Longshore and Harbor Worker's Compensation Act, as amended, 33 U.S.C. § 901 ("the Act") as extended pursuant to the Non-appropriated Fund Instrumentalities Act, 5 U.S.C. § 8171, *et seq*. The Act provides compensation to certain employees (or their survivors) engaged in employment with Non-Appropriated Fund entities for occupational diseases or unintentional work-related injuries, irrespective of fault, resulting in disability or death. This claim was brought by Debra Ellison ("Claimant") against Naval Military Personnel Command and the Bureau of Naval Personnel ("Employer") and Contract Claims Services ("Carrier"), arising from injuries sustained to her lower right leg while employed by Employer.

On March 22, 2002, the Director, Office of Worker's Compensation Programs ("OWCP"), referred this case to the Office of Administrative Law Judges ("OALJ") for a hearing. This case was assigned to Judge Richard Mills, but was remanded on January 16, 2003, at the parties' request. On June 2, 2004 the Director, OWCP, re-referred this case to the OALJ. This case was assigned to the undersigned on August 24, 2004. A formal hearing was held before the undersigned on January 10-11, 2005 in Houston, Texas, at which time all parties were afforded a full and fair opportunity to present evidence and arguments. Administrative Law Judge Exhibits ("AX") 1-8, Claimant's Exhibits ("CX") 1-29, and Respondent's Exhibits ("RX") 1-30 were admitted into the record. Claimant, Tony Lorenzo Ellison, and William L. Quintanilla testified at the hearing.

The findings and conclusions which follow are based on a complete review of the record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

STIPULATIONS

The parties stipulate and I find:

1) On April 21, 1999, Claimant sustained an injury in the course and scope of her employment with Employer.

2) An employer/employee relationship existed as between Claimant and Employer during the relevant periods.

3) Coverage under the Act exists as to the claim against the Employer.

4) The claim was timely noticed and filed.

5) Claimant's average weekly wage at the time of injury was $185.43 and the correct compensation rate would be $185.43, according to the minimum compensation rate.

ISSUES

The issues remaining to be resolved are:

1) The date of maximum medical improvement.

2) The extent of Claimant's disability.

3) Entitlement to medical expenses.

4) Interest on past due benefits, if any.

5) Assessment of attorney fees and costs, if any.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Summary of the Evidence

Claimant was born on April 16, 1962, in Kinston, North Carolina. Transcript of Hearing, January 10-11, 2005 ("TR") at 84. Claimant accompanied her husband, a chief petty officer hospital corpsman in the United States Navy, to La Maddalena, Italy for his tour of duty in 1997. TR at 88, 89. Claimant was originally injured while she was employed by the U.S. Naval Support Activity, Morale, Welfare and Recreation Department Child Development Center in La Maddalena, Italy, to perform childcare duties. *Id.* She was kicked twice in the right leg below her knee by a child on April 21, 1999. TR at 91. Claimant reported that she attempted to self-treat the injury with Motrin for several weeks but the injury started to get worse and she noticed swelling in her right ankle. TR at 94; CX 2 at 2. Claimant testified that she continues to experience discoloration in her right lower extremity, swelling and pain in both lower extremities, and her hands ache. TR at 93, 94, 116.

On June 14, 1999 Claimant received a promotion for a full time position paying $20,588 annually. TR at 95. On June 15, 1999 Claimant sought advice from a doctor at the La Maddalena clinic regarding her injury. TR at 94, 95. In August 1999 Claimant was evaluated in a naval hospital in Bethesda, Maryland and diagnosed with reflex sympathetic dystrophy ("RSD") in her lower right extremity. CX 2 at 2. Claimant was hospitalized from August 23, 1999 to October 24, 1999, in Naples, Italy, for RSD, which was treated with the steroid Prednisone. TR at 97, 103. Claimant returned to light duty work between November 1, 1999 and December 18, 1999, and subsequently was sent to the United States for medical treatment. TR at 97. Claimant has not worked since December 18, 1999. TR at 69, 97.

After Claimant moved to Corpus Christi, Texas, with her husband and daughter, she was treated by Drs. McFarling, Brown, Campbell, and Morgan. TR at 101. Corpus Christi doctors diagnosed Claimant with diabetes in January 2000. TR at 105. According to at least two treating physicians, the steroid treatment may have contributed to the development of her diabetes. *Id.* Subsequently, Claimant was prescribed narcotics, including Oxycontin and Morphine, for her RSD pain and she was gradually weaned off the Prednisone steroid regimen over the next six months to one year. TR at 107, 108. Claimant's diabetes requires that she have insulin at least twice a day and a special diet. TR at 31, 115.

Between the end of 1999 and June 2002 Claimant had no main treating physician, but she saw Drs. Brown and Campbell most frequently. TR at 102. On August 14, 2001 Dr. Campbell requested indefinite authorization for Claimant to receive ongoing thyroid therapy for thyroid problems that developed at the same time as Claimant's diabetes. CX 16 at 179; TR at 139. On August 22, 2001 Dr. Campbell prescribed long term treatment for Claimant's RSD, including lifelong physical therapy and chronic pain management. CX 14 at 173. Neither Dr. Brown nor Dr. Campbell authorized Claimant to return to work. TR at 103.

During 2001 and 2002 Dr. Jordan, a psychologist in Corpus Christi, saw Claimant on several occasions. CX 17. Dr. Jordan diagnosed Claimant with clinical depression related to her

injury and prescribed antidepressants for Claimant. TR at 127, 128. Claimant's husband testified that he saw her crying a few times a week when they first moved to Corpus Christi and Claimant testified that there were days when she would stay at home crying. TR at 41, 128. Mr. Ellison also reported that on family outings to Seaworld, Claimant had difficulty keeping up with the family and sometimes had to be pushed in a wheelchair. TR at 27. Claimant testified that she has good days and bad days, and on good days she feels almost normal and on bad days the pain keeps her in bed most of the day. TR at 114, 115. She stated that she cannot predict from one day to the next how she will feel. *Id*. Claimant reported that this uncertainty as to her physical condition prevents her from planning and is depressing and frustrating. *Id.*

On September 4, 2001 case manager Josh Engler completed a labor market survey for Respondents. RX 24 at 270. Mr. Engler provided the labor market survey to Respondent's independent medical examiner, Dr. Valdez. *Id.* Dr. Valdez reported that Claimant reached MMI on March 5, 2001 and he diagnosed a 32% impairment to her lower right extremity. RX 26 at 278. On September 10, 2001 Dr. Valdez approved the marketing representative and appointment setter positions recommended by Mr. Engler, but he believed the position of companion would not be safe for Claimant. RX 25 at 274.

Claimant and her husband reported that Claimant's pain medicine caused her to feel tired, drowsy, and uncoordinated. TR at 35, 108. Drs. Campbell and Brown recommended that Claimant seek a physician with RSD expertise. TR at 109. Claimant first saw Dr. Bacon, a pain medicine expert[1], on June 21, 2002. TR at 108; CX 18 at 188. Dr. Bacon, Claimant's main treating physician, also diagnosed her with chronic pain resulting from RSD, specifically using the nomenclature of neuropathic pain consistent with complex regional pain syndrome type I ("CRPS I"). TR at 124; CX 27 at 276, 280. On October 21, 2002, Dr. Bacon prescribed Provigil to Claimant to help counteract the sleepiness and lack of concentration caused by Claimant's opiates, but he reported that the side effects persisted in spite of the Provigil. CX 27 at 294.

Dr. Bacon opined that the initial injury to Claimant's leg caused her RSD. CX 28 at 424. He also opined to a reasonable degree of medical probability that there is a 70% chance that RSD symptoms in one extremity will migrate to other extremities. CX 27 at 284. Dr. Bacon reported that he performed an extensive review of CRPS articles and he identified 1500 as of 1998. CX 28 at 327. Among those he found 56 peer-reviewed medical articles that specifically addressed multiple extremity spread of RSD. CX 27 at 286; CX 28 at 327. Dr. Bacon also testified that he has seen depression symptoms persist in many of his CRPS I or RSD patients. CX 27 at 289. Dr. Bacon opined that it was reasonable for Claimant to have good days and bad days, and for the most part Claimant would not be able to predict her symptoms from one day to the next. CX 27 at 290, 291. According to Dr. Bacon's testimony, Claimant was not addicted to or abusing her medication. CX 27 at 293.

Dr. Bacon first recommended a spinal-cord stimulator to Claimant during her initial June 21, 2001 visit. CX 27 at 300. A trial spinal-cord stimulator that was surgically implanted on February 7, 2003 was successful and a permanent spinal-cord stimulator was implanted by Dr.

[1] Dr. Bacon practices pain medicine in San Antonio, Texas and is a board certified specialist in anesthesiology and pain medicine, and subspecialty certified in pain management. He also is a diplomat of the American Board of Pain Medicine. CX 27 at 274, 275.

Bacon on February 27, 2003. CX 28 at 320. Claimant testified that the cost of the procedure was approximately $30,000 and involved the implantation of a stimulator far under the skin of her left hip, with leads running under her skin to her spine. TR at 111-113, 136. Dr. Bacon opined that the Claimant received some pain relief from the permanent implant between February 27 and May 19, 2003, such that Claimant was only taking pain medication on an as needed basis. CX 28 at 320, 321. Claimant was able to discontinue taking morphine but still took Oxycontin and other pain medications at night when she could not run the stimulator. TR at 122.

On April 22, 2003 Dr. Bacon recorded that his prognosis for Claimant was fair to poor, the duration was lifelong, and he did not expect her to recover enough to work in gainful employment. CX 28 at 324. Dr. Bacon opined that the stimulator would require reprogramming at least every six months, and the pulse generator would need to be replaced every three to four years when the battery runs out. CX 28 at 321, 322. On October 10, 2003 Dr. Bacon filled out a work capacity evaluation stating that Claimant could not work an eight hour day but could work up to four hours a day, with a fifteen minute break every hour and restrictions on her activities. CX 18 at 205.

Claimant testified that after moving to Newport News, Virginia, with her family in August 2003 she attempted to have technicians from ANS adjust her ANS brand stimulator four times. TR 115-120. Claimant sought the adjustments because she experienced a pulling sensation in her lower back, it would pinch when turned on, and the stimulator would not always work. *Id*. Claimant flew from Virginia to Texas to see Dr. Bacon in October 2003 regarding reported problems with the stimulator. TR at 119. At the time of trial Claimant was taking Oxycontin, Bacophen, Gabitril, and insulin. TR at 122. Claimant also stated that the Gabitril impairs her concentration such that she would not be reliable as an employee. TR at 128, 129.

Respondents presented surveillance reports of Claimant performing various physical activities on several dates in July 2000, February 2001, and January 2002 in Corpus Christi, Texas. RX 19-21. Activities observed included walking with and without a cane, bending at the waist to retrieve items from her car, carrying numerous bags, placing all of her weight on her right leg, and spending 28 minutes helping someone clean out a garage. *Id.* Respondents contend that these reports show that Claimant is capable of working. TR at 138. On June 17, 2002, based on the surveillance videos, Dr. Valdez confirmed his prior impairment rating of 32% for Claimant's right lower extremity and 4% for her right ankle. RX 26 at 275. Dr. Valdez also informed Respondents that Claimant should be able to perform the duties of a childcare worker. *Id.*

Regarding the surveillance evidence, Claimant testified that Dr. Bacon told her to be as active as possible. TR at 125. Claimant also reported that on the day when she was cleaning out the garage she was taking medications and was feeling well. TR at 130, 131. Claimant stated that on one day of surveillance in February 2001 when Claimant appears able to function normally, she also went to a hospital for thyroid treatment. TR at 139.

On March 8, 2004 Dr. Ross performed an independent medical examination of Claimant for Respondents. RX 23 at 248. Claimant informed Dr. Ross of increased pain including

burning, shooting, and aching in her right hand and shoulder, pain in both legs and feet, and aggravation of the pain after walking or standing. RX 23 at 252. Dr. Ross reported that at the end of his examination of Claimant she cried somewhat uncontrollably and expressed frustration with repeated evaluations. RX 23 at 254. Dr. Ross opined that there were no objective findings to substantiate Claimant's complaints of pain and an absence of obvious signs of CRPS. RX 23 at 257. Dr. Ross diagnosed Claimant with a 5% whole person impairment and found that Claimant had reached MMI as of March 8, 2004. RX 23 at 257, 259. Further, Dr. Ross opined that there is no medical basis to support the phenomena of "migratory" complex regional pain syndrome. RX 23 at 258.

On December 16, 2004 Mr. Quintanilla, a vocational rehabilitation expert, reported that Claimant was employable, could obtain some employment, and could work with some restrictions. TR at 185, 186. He did not specifically mention chronic pain, depression, or inability to concentrate in his vocational rehabilitation assessment of Claimant. TR at 176, 179-181. In the assessment Mr. Quintanilla listed numerous entry-level positions that he believed were consistent with Claimant's functional capacity as described by Dr. Bacon, and similar positions that existed at the time in Corpus Christi, Texas, and Norfolk, Virginia.[2] RX 28 at 293-296.

II. Discussion of the Law and Facts

The Date of Maximum Medical Improvement.

An injured worker's impairment under the Act may be found to have changed from temporary to permanent if and when the employee's condition reaches the point of "maximum medical improvement" or "MMI". *James v. Pate Stevedoring Co.*, 22 BRBS 271, 274 (1989); *Phillips v. Marine Concrete Structures*, 21 BRBS 233, 235 (1988); *see also SGS control Services v. Director, OWCP*, 86 F.3d 438, 443-44 (5th Cir. 1996). Any disability before reaching MMI would be temporary in nature. *Id.* The date of maximum medical improvement is defined as that time at which the employee has received the maximum benefit of medical treatment such that the employee's condition will not further improve. The determination of the date of MMI is primarily medical and does not rely on economic or vocational considerations. *Louisiana Insurance Guaranty Ass'n v. Abbott*, 40 F.3d 122 (5th Cir. 1994); *Ballesteros v. Williamette Western Corp.*, 20 BRBS 184, 186 (1988); *Manson v. Bender Welding & Machine Co.*, 16 BRBS 307, 309 (1984). Medical evidence must establish the date at which the employee has received the maximum benefit from medical treatment such that his condition will not further improve. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56, 60 (1985). Accordingly, the determination as to when maximum medical improvement has been reached, so that a claimant's disability may be termed "permanent," is primarily a question of fact based upon medical evidence. *Lozada v. Director, OWCP*, 903 F.2d 168, 23 BRBS 78 (CRT) (2d Cir. 1990); *Hite v.*

[2] Mr. Quintanilla reported that Claimant would be employable in unskilled, entry-level jobs in which she could alternate sitting, standing, and walking, such as gate guard, counter clerk, security guard, production assembler, cashier, order clerk, assembler, security clerk, and surveillance system monitor. RX 28 at 292. Positions he found in Corpus Christi, Texas and Norfolk, Virginia, included telemarketer, receptionist, assembler, customer service representative, front desk clerk, library aid, and school crossing guard, among others. RX 28 at 293-296.

Dresser Guiberson Pumping, 22 BRBS 87, 91 (1989); *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988).

At issue here are the dates on which Claimant's condition reached maximum medical improvement. In evaluating this issue, generally the opinion of the claimant's treating physician is to be accorded greater weight since the physician "is employed to cure and has a greater opportunity to know and observe the patient as an individual." *See Amos v. Director, OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998), *amended by* 164 F.3d 480 (9th Cir.), *cert. denied sub nom. Sea-Land Serv., Inc. v. Director, OWCP*, 528 U.S. 809 (1999).

Based on the medical evidence provided in the record, the undersigned finds Claimant's condition reached maximum medical improvement on April 23, 2003, approximately two months after a permanent spinal-cord stimulator was surgically implanted in Claimant's left hip area. Dr. Bacon, Claimant's main treating physician, testified that Claimant reached maximum medical improvement on April 23, 2003. TR at 124; CX 28 at 350-351.

In contrast, Respondent's independent medical practitioner, Dr. Valdez, declared that Claimant reached MMI on March 5, 2001, prior to the spinal-cord stimulator surgery recommended by Dr. Bacon, and diagnosed a 32% impairment to her lower right extremity. RX 26 at 278. After examining Claimant, Dr. Ross, another independent medical examiner for Respondents, reported that there were no objective findings to substantiate Claimant's complaints of CRPS symptoms. RX 23 at 257. Dr. Ross diagnosed Claimant with a 5% whole person impairment and found that Claimant had reached MMI as of March 8, 2004. RX 23 at 257, 259.

The undersigned accepts Dr. Bacon's testimony. The fact that Claimant underwent surgery for a spinal-cord stimulator in February 2003, and continued to seek treatment from Dr. Bacon following the surgery, allows me to believe that Claimant was still receiving the benefit of medical treatment to improve her condition. However, Claimant's condition became permanent on April 23, 2003, the date when Claimant informed Dr. Bacon that she was doing well with the stimulator, but she still required pain medication when she could not run the stimulator. Claimant's condition is unlikely to improve beyond this date because her prognosis is fair to poor and her condition is expected to be lifelong. CX 28 at 424, 426. Claimant will require pain medication, neuropathic pain medication, muscle relaxers, and wakeful agents indefinitely. CX 28 at 426. In addition, Claimant testified that the stimulator now causes her discomfort rather than relief and efforts at reprogramming it have been unsuccessful. CX 28 at 426; TR at 116-119. Thus between April 23, 2003 and the hearing on January 11, 2005, Claimant's condition did not improve and it appears that Claimant lost the original benefits of the stimulator.

Based on the medical evidence in the record, the undersigned determines that Claimant's entire condition reached maximum medical improvement on April 23, 2003.

The Extent of Claimant's Disability.

Under the Act, Claimant has the initial burden of establishing the extent of her disability. *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 60 (1985). Disability under the Act

means "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment . . . ." 33 U.S.C. § 902(10). In order to prove disability, Claimant must show an economic loss in addition to her physiological impairment. *Sproull v. Stevedoring Services of America*, 25 BRBS 100, 110 (1991). As Claimant's multifaceted condition consists of non scheduled injuries, she must prove that she has suffered a loss of wage-earning capacity.

As to the extent of Claimant's disability, under the Act a claimant is presumed to be totally disabled where the claimant establishes an inability to return to the claimant's usual employment. *Manigault v. Stevens Shipping Co.*, 22 BRBS 332, 333 (1989); *Elliot v. C&P Tel. Co.*, 16 BRBS 89, 91 (1984). Here, in medical evidence and expert testimony, Claimant established that she became totally temporarily disabled following her initial April 21, 1999 injury. When Claimant's condition reached MMI, Claimant became totally permanently disabled. I find that Claimant cannot return to her prior childcare employment. Therefore, Claimant has met her burden, and is presumed to be totally disabled. *Walker v. Sun Shipbuilding & Dry Dock Co.*, 19 BRBS 171 (1986).

Once Claimant establishes that she is unable to do her usual work, she has established a *prima facie* case of total disability and the burden shifts to Employer to establish the availability of suitable alternative employment which Claimant is capable of performing. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1032 (5th Cir. 1981). In order to meet this burden, Employer must show the availability of job opportunities within the geographical area in which she was injured or in which Claimant resides, which she can perform given her age, education, work experience and physical restrictions, and for which she can compete and reasonably secure. *Turner*, 661 F.2d at 1042-43; *Roger's Terminal and Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 691 (5th Cir. 1986); *Mijangos v. Avondale Shipyard, Inc.*, 19 BRBS 165 (1986). A job provided by Employer may constitute evidence of suitable alternative employment if the tasks performed are necessary to Employer and if the job is available to Claimant. *Peele v. Newport News Shipbuilding & Dry Dock*, 18 BRBS 224, 226 (1987); *Wilson v. Dravo Corp.*, 22 BRBS 463, 465 (1989); *Beaulah v. Avis Rent-A-Car*, 19 BRBS 131, 133 (1986).

On December 16, 2004 Mr. Quintanilla, a vocational rehabilitation expert for Respondents, reported that Claimant could work with some restrictions. TR at 185, 186. Respondents' independent medical examiner, Dr. Ross, testified that Claimant is capable of performing all the jobs listed in Mr. Quintanilla's labor market survey. RX 26 at 12. However, on October 10, 2003, Dr. Bacon, Claimant's treating physician, wrote in a work capacity evaluation that Claimant would not be able to work more than four hours per day and would require fifteen minute breaks each hour, in addition to other physical restraints. CX 28 at 425. Additionally, on December 11, 2003 Dr. Bacon opined that it was unlikely for Claimant to be employed in a work capacity that would appropriately accommodate for her disorder. CX 28 at 426.

Claimant takes strong pain medications that often leave her drowsy and she cannot predict the days on which her pain will be so severe that she must remain in bed. In light of Dr. Bacon's many restrictions on Claimant's work capacity and Claimant's testimony that she would

be an unreliable worker, the Respondents have failed to show that Claimant is capable of gainful employment in alternate positions. Accordingly, I find Claimant was totally temporary disabled between April 21, 1999 and April 23, 2003, except for the period when Claimant returned to light duty work between November 1, 1999 and December 18, 1999. The undersigned further finds that Claimant has been incapable of participating in any gainful employment and has been totally permanently disabled since MMI on April 23, 2003.

Entitlement to Medical Expenses.

Where a claimant has demonstrated that she has suffered from a compensable injury under the LHWCA, the employer is required to furnish medical, surgical and other attendant benefits and treatment for as long as the nature of the recovery process requires. 33 U.S.C. § 907. The claimant must establish that medical expenses are related to the compensable injury and are reasonable and necessary. *Pardee v. Army Force Exchange Service*, 3 BRBS 1130 (1981); *Pernell v. Capital Hill Masonry*, 11 BRBS 532, 539 (1979). The medical expenses are assessable against the employer so long as they are related to the compensable injury. *See Pardee, supra.*

The employer is liable for all medical expenses which are the natural and unavoidable result of the work injury, and are not due to an intervening cause. For example, an employer must pay for the treatment of the claimant's myocardial infarction, if the judge finds that it is causally related to a prior work-related injury. *Atlantic Marine v. Bruce*, 661 F.2d 898 (5th Cir. 1981), *aff' g* 12 BRBS 65 (1980). Further, the LHWCA's liberal concept of causation is applied to subsequent injuries as well as to initial ones. *Id.* at 891.

Dr. Bacon opined that the initial workplace injury to Claimant's leg caused her RSD, and that it is not at all unusual that the RSD in Claimant's lower right extremity migrated to her other extremities. CX 27 at 282; CX 28 at 424. At least two of Claimant's treating doctors in Corpus Christi believed that the initial steroid treatment of Claimant's RSD induced her diabetes. TR at 105. Furthermore, Claimant testified that her thyroid problems developed at the same time as her diabetes. TR at 139. Thus the undersigned finds that Claimant's RSD, diabetes, and thyroid problems are compensable injuries causally related to Claimant's work injury and subsequent treatment.

Treatment is compensable even though it is due only partly for a work-related condition. *Turner v. Chesapeake & Potomac Tel. Co.*, 16 BRBS 255, 258 (1984). In *Kelley v. Bureau of National Affairs*, 20 BRBS 169,172 (1988), the Board held that where relevant evidence established that the claimant's psychological condition was occasioned, at least in part, by her work injury, treatment received by the claimant for this condition was compensable under the LHWCA. Here, Dr. Bacon opined that he has seen significant depression symptoms, such as those of Claimant, in approximately 90% of his RSD patients, and the depression persists in many patients. CX 27 at 289. Also, Dr. Jordan diagnosed Claimant with clinical depression related to her injury and prescribed antidepressants for Claimant. TR at 127, 128; CX 17. The undersigned accepts this testimony and finds that treatment for Claimant's depression is compensable.

Therefore, the undersigned finds Respondents are liable for all outstanding medical bills related to Claimant's disability and shall furnish reasonable, appropriate and necessary medical care and treatment as required by Section 7 of the Act.

Interest On Past Due Benefits, If Any.

Claimant is entitled to interest on any accrued unpaid compensation benefits. *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 556, 559 (1978), *aff'd in part, rev'd in part sub nom., Newport News Shipbuilding & Dry Dock Company v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979). Interest is mandatory and cannot be waived in contested cases. *Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833 (1982); *MacDonald v. Sun Shipbuilding & Dry Dock Co.*, 10 BRBS 734 (1978). Accordingly, interest on the unpaid compensation amounts due and owing by the Employer should be included in the District Director's calculations of amounts due under this decision and order.

Assessment of Attorney Fees and Costs, If Any.

Thirty (30) days is hereby allowed to Claimant's counsel for the submission of such an application. *See* 20 C.F.R. § 702.132. A service sheet showing that service has been made upon all the parties, including the claimant, must accompany this application. The parties have fifteen (15) days following the receipt of any such application within which to file any objections.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, I issue the following compensation order. The specific dollar computations may be administratively calculated by the District Director.

It is therefore **ORDERED** that:

1) Respondents, Naval Military Personnel Command and the Bureau of Naval Personnel and/or Contract Claims Services, shall pay Claimant compensation for her unscheduled injuries as total temporary disability for April 21, 1999 through April 23, 2003, except for the period when Claimant returned to light duty work between November 1, 1999 and December 18, 1999, and total permanent disability commencing April 23, 2003, and continuing. Respondents shall also pay interest on accrued unpaid amounts due and are entitled to a credit for all amounts previously paid to Claimant.

2) Pursuant to Section 7 of the Act, Respondents shall furnish such reasonable, appropriate, and necessary medical care and treatment as Claimant's condition may require, subject to the provisions of Section 7 of the Act.

A

Russell D. Pulver
Administrative Law Judge